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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/695,402

10/25/2000

Howard W. Fingerhut

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08/24/2006

WITHERS & KEYS FOR BELL SOUTH

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EXAMINER

DOAN, DUYEN MY

ART UNIT

PAPER NUMBER

2152

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">09/695,402</p>	<p>Applicant(s)</p> <p align="center">FINGERHUT ET AL.</p>	
	<p>Examiner</p> <p align="center">Duyen M. Doan</p>	<p>Art Unit</p> <p align="center">2152</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 May 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7-39 and 41-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-39,41-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/3/06 has been entered. Claims 1-5, 7-39, 41-87 are amended for examination. Claims 6 and 40 are cancelled.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-39, 41-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messinger et al (us pat 6,687,750) (hereinafter Mes) in view of Cen (us pat 6,738,349)

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As regarding claim 1, Mes discloses creating a histogram file (see Mes col.4, lines 12-19, bar charts, graph); transferring the traffic log from the first location to a second location (see Mes col.1, lines 57-67; col.2, lines 1-37, transfer collected traffic information from routers to administrator); storing the traffic log generated by the network at the second location (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52); analyzing the stored traffic log to determine the time of creation of the traffic log and the network entry and exit points of the packet (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52); and updating the histogram file using at least the time of creation of the traffic log (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); wherein the histogram file is utilized to monitor network conditions in near real-time enabling the detection and correction of network overloads and congestion before network customers are affected (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

Mes does not explicitly teach generating a traffic log at a first location within the network based upon detection of a packet, the traffic log containing a plurality of values detected from the packet including a network entry point, and a network exit point of the packet, and a packet state, wherein the packet state includes at least one of the following: an OK state, an illegal state, and an error state; at least the packet state and at least one of the entry and exit points of the packet.

However Cen teaches generating a traffic log at a first location within the network based upon detection of a packet (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47, extract data from the packet, derives measurement

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results), the traffic log containing a plurality of values detected from the packet including a network entry point, and a network exit point of the packet (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47, ingress monitor and egress monitor of packets) , and a packet state, wherein the packet state includes at least one of the following: an OK state, an illegal state, and an error state; at least the packet state and at least one of the entry and exit points of the packet (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to include the teaching of Cen to the method of Mes, because by detecting packet and generating the traffic log from the monitored packet would allow the network administrator to measure the end to end latency and packet loss (see Cen col.1, lines 30-32), thus determining the condition of the network and take appropriate action base upon the condition of the network.

As regarding claim 2, Mes-Cen discloses wherein the histogram file is a flat file, whereby direct and rapid access to stored data is effected (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

As regarding claim 3, Mes-Cen discloses wherein two histogram files are created, a first histogram being representative of traffic being passed into the network and a second histogram being representative of the traffic being passed from the network (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47, if one can generate a histogram file, it is obvious to generate a second one or a third one base on the criteria set, in this case the ingress point and the egress point).

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As regarding claim 4, Mes-Cen discloses the histogram file is representative of traffic passing to a host connected to the entry or exit point (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47). The same motivation was utilized in claim 1 applied equally well to claim 4.

As regarding claim 5, Mes-Cen discloses repeating steps (b) - (d) for at least a predetermined period (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

As regarding claim 7, Mes-Cen discloses wherein the histogram plots packets per minute versus time (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

As regarding claim 8, Mes-Cen discloses broadcasting from a server computer data representative of the histogram to a client computer (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

As regarding claim 9, Mes-Cen discloses wherein the network is a Mobitex network (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). (note: Mobiltex technology is a well-known packet data network).

As regarding claim 10, Mes-Cen discloses displaying a histogram based on data in the histogram file (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

As regarding claim 11, Mes-Cen discloses creating at least one histogram for each host of the network (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54;

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col.4, lines 1-12, lines 33-47). The same motivation was utilized in claim 1 applied equally well to claim 11.

As regarding claim 12, Mes-Cen discloses selecting for display the at least one histogram for a particular host (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47). The same motivation was utilized in claim 1 applied equally well to claim 12.

As regarding claim 13, Mes-Cen discloses monitoring a central location of the network for new traffic logs (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

As regarding claims 14-24, the limitations are similar to limitations of claims 1-5, 7-13, therefor rejected for the same rationales as claims 1-5, 7-13.

As regarding claim 25, Mes discloses (a) creating a histogram file for at least one link in the network (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); transferring the traffic log from the first location to a second location (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); storing the traffic log generated by the network (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); analyzing the traffic log to determine the time of creation of the traffic log and the network entry and exit points of the packet (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); determining a network path between the entry and exit points (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); determining whether the link falls along the network path; determining a number of bytes carried by the packet associated with the

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traffic log; and the histogram to a client computer (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); updating the histogram file using at least the time of creation of the traffic log, the packet state, and the number of bytes when the link falls along the network path, wherein the histogram file is utilized to monitor network conditions in near real-time enabling the detection and correction of network overloads and congestion before network customers are affected (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19);

Mes does not explicitly teach generating a traffic log at a first location within the network based upon detection of a packet, the traffic log containing a plurality of values detected from the packet including a network entry point and a network exit point of the packet, a packet state, wherein the packet state includes at least one of the following: an OK state, an illegal state, and an error state, and a number of bytes of the packet. However Cen teaches generating a traffic log at a first location within the network based upon detection of a packet (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47, extract data from the packet, derives measurement results), the traffic log containing a plurality of values detected from the packet including a network entry point, and a network exit point of the packet (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47, ingress monitor and egress monitor of packets) , and a packet state, wherein the packet state includes at least one of the following: an OK state, an illegal state, and an error state; at least the packet state and at least one of the entry and exit points of the packet (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47).



It would have been obvious to one with ordinary skill in the art at the time the invention was made to include the teaching of Cen to the method of Mes, because by detecting packet and generating the traffic log from the monitored packet would allow the network administrator to measure the end to end latency and packet loss (see Cen col.1, lines 30-32), thus determining the condition of the network and take appropriate action base upon the condition of the network.

As regarding claims 26-35, the limitations are similar to limitations of claims 2-5, 7-13, therefore rejected for the same rationales as claims 2-5, 7-13.

As regarding claim 36, Mes discloses detecting when a new traffic log is available at a network control center (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); downloading the new traffic log to a server computer that maintains a plurality of histogram files (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); updating at least one histogram file of the server computer using information available from the new traffic log (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); deleting the new traffic log; and making the updated at least one histogram file available to a client computer from the server computer, wherein the histogram file is utilized to monitor network conditions in near real-time enabling the detection and correction of network overloads and congestion before network customers are affected (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

Mes does not explicitly disclose analyzing the new traffic log to determine one or more values detected from the packet that are stored by the new traffic log that are

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relevant to the at least one histogram, the one or more values including a packet state wherein the packet state includes at least one of the following: an OK state, an illegal state, and an error state.

Cen teaches analyzing the new traffic log to determine one or more values detected from the packet that are stored by the new traffic log that are relevant to the at least one histogram, the one or more values including a packet state wherein the packet state includes at least one of the following: an OK state, an illegal state, and an error state (see Cen col.1, lines 22-39; col.2, lines 1-20, lines 46-54; col.4, lines 1-12, lines 33-47).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to include the teaching of Cen to the method of Mes, because by detecting packet and generating the traffic log from the monitored packet would allow the network administrator to measure the end to end latency and packet loss (see Cen col.1, lines 30-32), thus determining the condition of the network and take appropriate action base upon the condition of the network.

As regarding claims 37-39,41-42, the limitations are similar to limitations of claims 2-5, 7-13, therefore rejected for the same rationales as claims 2-5, 7-13.

As regarding claims 43-48, the limitations are similar to limitations of claims 1-5, 7-13, therefore rejected for the same rationales as claims 1-5, 7-13.

As regarding claims 43-48, the limitations are similar to limitations of claims 1-5,7-13, therefore rejected for the same rationales as claims 1-5,7-13.

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As regarding claims 49-59, the limitations are similar to limitations of claims 1-5,7-13, therefore rejected for the same rationales as claims 1-5,7-13.

As regarding claims 60-68, the limitations are similar to limitations of claims 1-5,7-13, therefore rejected for the same rationales as claims 1-5,7-13.

As regarding claims 69-77, the limitations are similar to limitations of claims 25-35, therefore rejected for the same rationales as claims 25-35.

As regarding claims 78-83, the limitations are similar to limitations of claims 25-35, therefore rejected for the same rationales as claims 25-35.

As regarding claims 84-87, the limitations are similar to limitations of claims 25-35, therefore rejected for the same rationales as claims 25-35.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5,7-39,41-87 have been considered but are moot in view of the new ground(s) of rejection.

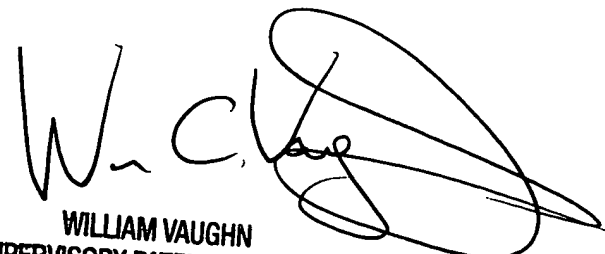
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duyen M. Doan whose telephone number is (571) 272-4226. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob A. Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Examiner  
Duyen Doan



WILLIAM VAUGHN  
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